

Part 3

Relations of Partners to Persons Dealing with Partnership

48-1d-301 Partner agent of partnership.

Subject to the effect of a statement of partnership authority under Section 48-1d-303, the following rules apply:

- (1) Each partner is an agent of the partnership for the purpose of its activities and affairs. An act of a partner, including the signing of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership's activities and affairs or activities and affairs of the kind carried on by the partnership binds the partnership, unless the partner did not have authority to act for the partnership in the particular matter and the person with which the partner was dealing knew, or had notice, that the partner lacked authority.
- (2) An act of a partner, which is not apparently for carrying on in the ordinary course the partnership's activities and affairs or activities and affairs of the kind carried on by the partnership, binds the partnership only if the act was actually authorized by all the other partners.

Enacted by Chapter 412, 2013 General Session

48-1d-302 Transfer of partnership property.

- (1) Partnership property may be transferred as follows:
 - (a) Subject to the effect of a statement of partnership authority under Section 48-1d-303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.
 - (b) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.
 - (c) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.
- (2) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under Section 48-1d-301 and:
 - (a) as to a subsequent transferee who gave value for property transferred under Subsection (1)(a) or (1)(b), proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or
 - (b) as to a transferee who gave value for property transferred under Subsection (1)(c), proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.
- (3) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under Subsection (2), from any earlier transferee of the property.

- (4) If a person holds all the partners' interests in the partnership, all the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

Enacted by Chapter 412, 2013 General Session

48-1d-303 Statement of partnership authority.

- (1) A partnership may deliver to the division for filing a statement of partnership authority. The statement:
- (a) must include:
 - (i) the name of the partnership; and
 - (ii) if the partnership is not a limited liability partnership, the street and mailing addresses of its principal office;
 - (b) with respect to any position that exists in or with respect to the partnership, may state the authority, or limitations on the authority, of all persons holding the position to:
 - (i) execute an instrument transferring real property held in the name of the partnership; or
 - (ii) enter into other transactions on behalf of, or otherwise act for or bind, the partnership; and
 - (c) may state the authority, or limitations on the authority, of a specific person to:
 - (i) execute an instrument transferring real property held in the name of the partnership; or
 - (ii) enter into other transactions on behalf of, or otherwise act for or bind, the partnership.
- (2) To amend or cancel a statement of authority filed by the division, a partnership must deliver to the division for filing an amendment or cancellation stating:
- (a) the name of the partnership;
 - (b) the street and mailing addresses of the partnership's principal office;
 - (c) the date the statement of authority being affected became effective; and
 - (d) the contents of the amendment or a declaration that the statement of authority is canceled.
- (3) A statement of authority affects only the power of a person to bind a partnership to persons that are not partners.
- (4) Subject to Subsection (3) and Subsection 48-1d-103(4)(a), and except as otherwise provided in Subsections (6), (7), and (8), a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of any person's knowledge or notice of the limitation.
- (5) Subject to Subsection (3), a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that if the person gives value:
- (a) the person has knowledge to the contrary;
 - (b) the statement of authority has been canceled or restrictively amended under Subsection (2); or
 - (c) a limitation on the grant is contained in another statement of authority that became effective after the statement of authority containing the grant became effective.
- (6) Subject to Subsection (3), an effective statement of authority that grants authority to transfer real property held in the name of the partnership and a certified copy of which is recorded in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:
- (a) the statement of authority has been canceled or restrictively amended under Subsection (2), and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or

- (b) a limitation on the grant is contained in another statement of authority that became effective after the statement of authority containing the grant became effective, and a certified copy of the later-effective statement of authority is recorded in the office for recording transfers of the real property.
- (7) Subject to Subsection (3), if a certified copy of an effective statement of authority containing a limitation on the authority to transfer real property held in the name of a partnership is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.
- (8) Subject to Subsection (9), an effective statement of dissolution is a cancellation of any filed statement of authority for the purposes of Subsection (6) and is a limitation on authority for purposes of Subsection (7).
- (9) After a statement of dissolution becomes effective, a partnership may deliver to the division for filing and, if appropriate, may record a statement of authority that is designated as a postdissolution statement of authority. The postdissolution statement of authority operates as provided in Subsections (6) and (7).
- (10) Unless canceled earlier, an effective statement of authority is canceled by operation of law five years after the date on which the statement of authority, or its most recent amendment, becomes effective. Cancellation is effective without recording under Subsection (6) or (7).
- (11) An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for purposes of Subsection (6)(a).

Enacted by Chapter 412, 2013 General Session

48-1d-304 Statement of denial.

A person named in a filed statement of authority granting that person authority may deliver to the division for filing a statement of denial that:

- (1) provides the name of the partnership and the caption of the statement of authority to which the statement of denial pertains; and
- (2) denies the grant of authority.

Enacted by Chapter 412, 2013 General Session

48-1d-305 Partnership liable for partner's actionable conduct.

- (1) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of activities and affairs of the partnership or with the actual or apparent authority of the partnership.
- (2) If, in the course of the partnership's activities and affairs or while acting with actual or apparent authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

Enacted by Chapter 412, 2013 General Session

48-1d-306 Partner's liability.

- (1) Except as otherwise provided in Subsections (2) and (3), all partners are liable jointly and severally for all debts, obligations, and other liabilities of the partnership unless otherwise agreed to by the claimant or provided by law.

- (2) A person that becomes a partner is not personally liable for a debt, obligation, or other liability of the partnership incurred before the person became a partner.
- (3) A debt, obligation, or other liability of a partnership incurred while the partnership is a limited liability partnership is solely the debt, obligation, or other liability of the limited liability partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited liability partnership solely by reason of being or acting as a partner. This Subsection (3) applies:
 - (a) despite anything inconsistent in the partnership agreement that existed immediately before the vote or consent required to become a limited liability partnership under Subsection 48-1d-1101(2); and
 - (b) regardless of the dissolution of the limited liability partnership.
- (4) The failure of a limited liability partnership to observe any formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on any partner of the limited liability partnership for a debt, obligation, or other liability of the limited liability partnership.
- (5) The cancellation or administrative revocation of a limited liability partnership's statement of qualification does not affect the limitation under this section on the liability of a partner for a debt, obligation, or other liability of the partnership incurred while the statement was in effect.
- (6) Subsection (3) and Part 11, Limited Liability Partnerships, do not alter any law applicable to the relationship between a person providing a professional service and a person receiving the professional service, including liability arising out of those professional services. A person providing a professional service remains personally liable for a result of that person's act or omission.

Enacted by Chapter 412, 2013 General Session

48-1d-307 Actions by and against partnership and partners.

- (1) A partnership may sue and be sued in the name of the partnership.
- (2) To the extent not inconsistent with Section 48-1d-306, a partner may be joined in an action against the partnership or named in a separate action.
- (3) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.
- (4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under Section 48-1d-306, and:
 - (a) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
 - (b) the partnership is a debtor in bankruptcy;
 - (c) the partner has agreed that the creditor need not exhaust partnership assets;
 - (d) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or
 - (e) liability is imposed on the partner by law or contract independent of the existence of the partnership.
- (5) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under Section 48-1d-308.

Enacted by Chapter 412, 2013 General Session

48-1d-308 Liability of purported partner.

- (1) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.
- (2) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.
- (3) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.
- (4) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.
- (5) Except as otherwise provided in Subsections (1) and (2), persons who are not partners as to each other are not liable as partners to other persons.

Enacted by Chapter 412, 2013 General Session